INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	2
Argument	4
Conclusion	5
Appendix	6

CITATIONS

Cases:

J. Greenebaum Tanning Co. v. *National Labor Relations Board*, certiorari denied, No. 152, this Term 5

National Labor Relations Board v. *Express Publishing Company*, No. 442, this Term, decided March 3, 1941 ..... 2, 4

Republic Steel Corp. v. *National Labor Relations Board*, 311 U. S. 7 5

Subin v. *National Labor Relations Board*, certiorari denied, No. 280, this Term 5

Viking Pump Co. v. *National Labor Relations Board*, certiorari denied, No. 606, this Term 4

Statute:

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151, *et seq.*):

Sec. 7 6

Sec. 8 (1) 6

Sec. 8 (5) 6

Sec. 9 (a) 6

Sec. 10 (e) 6

304034—41

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 862

MCQUAY-NORRIS MANUFACTURING COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (Pet. App. 15–24)[1] is reported in 116 F. (2d) 748. The findings of fact, conclusions of law, and order of the National Labor Relations Board (App. 507–523) are reported in 21 N. L. R. B., No. 72.

[1] The symbol "Pet." refers to the petition; "Pet. App." refers to the appendix attached to the petition; and "App." refers to the printed record below.

JURISDICTION

The decree of the court below was entered on January 16, 1941 (Pet. App. 24–26). The petition for a writ of certiorari was filed March 21, 1941. The jurisdiction of the Court is invoked under Section 240 (a) of the Judicial Code, as amended.

QUESTION PRESENTED

The only question urged in the petition for certiorari is one which has not heretofore been raised in this case and which we therefore think is not properly presented. It is whether the Board's cease and desist order, enforced by the court below, is too broad, in the light of this Court's decision in *National Labor Relations Board* v. *Express Publishing Co.*, No. 442, this Term, decided March 3, 1941.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in the Appendix.

STATEMENT

Upon the usual proceedings, the Board issued its findings of fact, conclusions of law, and order (App. 507–523). The Board's findings, which are not contested, may be briefly summarized as follows:

Petitioner met with representatives of the United Automobile Workers of America, Local 266, in a series of conferences over a period of 8 months to negotiate a collective agreement for its Indianapolis plant (App. 511–513). Throughout

these conferences, petitioner recognized that Local 226 represented a majority of the employees at its Indianapolis plant (App. 512). Petitioner refused, however, to incorporate into the agreement the exclusive recognition clause requested by Local 226 and insisted, instead, upon a limited clause which recognized Local 226 "as the sole collective bargaining agency for those employees who are affiliated with the Union" (App. 512–513). As a result of petitioner's refusal to incorporate an exclusive recognition clause, no contract was executed (App. 513). The Board found that this conduct of petitioner constituted a refusal to bargain collectively with Local 226 as the exclusive representative of its employees in an appropriate unit, and thereby interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, in violation of Section 8 (5) and (1) of the Act (App. 517, 520, 521).

Upon the foregoing findings, the Board ordered petitioner to cease and desist from (a) refusing to bargain with Local 226 as the exclusive representative of its Indianapolis employees in the appropriate unit, (b) in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, and (c) to take certain affirmative action not here in issue (App. 522).

The court below enforced the Board's order as issued (Pet. App. 24, 25).

ARGUMENT

Petitioner contends (Pet. 8–9, 14) that the decree below, insofar as it enforces the provision of the Board's order requiring petitioner to cease and desist from in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, is contrary to the subsequent decision of this Court in *National Labor Relations Board* v. *Express Publishing Company,* No. 442, this Term, decided March 3, 1941. But in the present case petitioner raised no question in the court below concerning this provision; it was not specifically challenged either in the petition for review (App. 528–531) or in petitioner's briefs.[2] The court below made no mention of the provision, even in its summary of the Board's order (Pet. App. 23–24), and no petition for rehearing was filed. This Court has recently indicated that under such circumstances it does not regard questions of the validity of particular provisions of Board orders as properly raised. *Viking Pump Co.* v. *National Labor Relations Board,* certiorari denied, No. 606, this Term; *J. Greenebaum Tanning Co.* v. *National*

[2] Petitioner's briefs below attacked the Board's findings and order as not supported by substantial evidence, and the power of the Board to require a recognition clause to be embodied in a contract; they made no mention of the cease and desist provisions. Brief and reply brief for petitioner, No. 7269, October Term, 1939, Circuit Court of Appeals for the Seventh Circuit.

Labor Relations Board, certiorari denied, No. 152, this Term; *Subin* v. *National Labor Relations Board,* certiorari denied, No. 280, this Term. In these cases the so-called "work-relief" provision was not contested in the lower courts but was urged as one of the reasons for granting certiorari. And in the *Viking Pump* case, the petition was filed after the decision of this Court in *Republic Steel Corp.* v. *National Labor Relations Board,* 311 U. S. 7, invalidating the "work relief" provision.

CONCLUSION

The petition presents no question which is properly raised; it should, therefore, be denied.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.
ROBERT B. WATTS,
General Counsel, National Labor Relations Board.

APRIL 1941.